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# Supreme Court of the United States

OCTOBER TERM, 1954

## No. 164

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**PHILIP ANDREW WITMER,**

***Petitioner***

***v.***

**UNITED STATES OF AMERICA,**

***Respondent***

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# Petitioner's Reply to Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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*Counsel for Petitioner*

SUPREME COURT OF THE UNITED STATES

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MAY IT PLEASE THE COURT:

Since the Clerk of this Court was informed by counsel for petitioner that no reply in opposition would be filed, there has been handed down by the United States Court of

Appeals for the Seventh Circuit a decision in direct conflict with the holding of the court below that the performance of civilian work in a defense plant was basis in fact for the denial of the conscientious objector status, which makes necessary this brief memorandum designated Petitioner's Reply to Brief in Opposition.

In *United States v. Wilson*, 7th, Cir., July 15, 1954, — F. 2d —, the Court said:

> "Neither do we think the defendant's employment as a railroad telegraph operator was in any way inconsistent with his claim to exemption as a conscientious objector. Section 6(j) of the Act, 50 U. S. C. A. App. Sec. 456(j), provides exemption for persons conscientiously opposed to 'participation in war in any form.' It would be wholly unrealistic to construe this language to mean that a person whose civilian employment indirectly contributed to the war effort could not, therefore, meet the statutory test for exemption. Such a construction of the Act would completely nullify the provisions granting exemption to conscientious objectors, for it is difficult to conceive of any gainful activity which, in periods of extensive mobilization and training, would not in some manner aid the common purpose. Moreover, the Act expressly recognizes that one may engage in civilian work contributing to the national welfare without thereby losing the right to be classified as a conscientious objector. Section 6(j) provides that persons conscientiously opposed to noncombatant service in the armed forces shall be ordered to perform 'such civilian work contributing to the maintenance of the national health, safety, or interest' as may be considered appropriate by the local board. It is perfectly clear in this case that the nature of the defendant's civilian occupation

> could not be a basis in fact for denying him the status of a conscientious objector."

It is respectfully submitted that the conflict between the court below and the United States Court of Appeals for the Seventh Circuit warrants the granting of the writ of certiorari in this case.

Respectfully submitted,

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October 1, 1954.